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Appl. No. 09/842,754
Corrected Appeal Brief dated December 19, 2006

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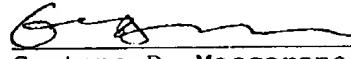
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CORRECTED APPEAL BRIEF

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Sir:

This is a Corrected Appeal Brief submitted in response to the Notification of Non-Compliant Appeal Brief mailed December 4, 2006 in the above-identified application for Letters Patent.

REAL PARTY IN INTEREST

The real party in interest in this appeal is Polaroid Corporation, a corporation organized and existing under the laws of the State of Delaware, of 1265 Main Street, Waltham, MA 02451.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

STATUS OF CLAIMS

1. Claims 1 - 15, 19 and 20 have been rejected as being unpatentable over the references applied in support of the rejections.

The rejections of Claims 1 - 15, 19 and 20 are being appealed.

2. Claims 26 - 28 have been withdrawn from consideration pursuant to a requirement for Restriction.

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STATUS OF AMENDMENTS

Appellants did not file an amendment after the final Office action and elect to prosecute this appeal on the basis of the claims which were in the application prior to the final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1 and 15 are independent.

I. Claim 1 is directed to a method for transmitting to a remote node (5-Fig. 1) in a data communications network, digital images from an image data source. A customer (10-Fig. 1) is provided with a specific communication apparatus (2-Fig. 1) having identifying information (step 100-Fig. 2A) stored in a memory thereof (the last six lines of page 7 through the second line of page 8).

One or more images are accessed and transferred (step 115-Fig. 2A) from the image data source (1-Fig. 1) to the communication apparatus (page 8, lines 3-5).

The closest entry point into the data communications network is determined (step 118-Fig. 2A; page 8, lines 9-10). Information is automatically sent from the communications apparatus (2-Fig. 1), via a toll free link, to the data communications network (page 11, lines 3-14). The data network automatically recognizes

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the location of the communication apparatus, compares the location to a stored list of network entry points, selects the closest entry point and transmits back to the communications apparatus the contact information for the selected closest entry point (page 11, lines 6 - 14).

The communications apparatus automatically uses the provided contact information to establish communication with the data network via the closest entry point. The image or images and the identifying information are transmitted, through the closest entry point, to a remote node (5-Fig.1) of the data communications network (page 12, first full paragraph).

The image or images and the identifying information are received at the remote node of the data communication network.

II. Claim 15 is directed to a communications apparatus (2-Fig. 1) which includes:

means for accessing an image or images (step 310, Fig. 4) from an image data source (1-Fig. 1) (page 13, lines 9-11);

means for storing identifying information (230,250-Fig. 3) in a storage component of the apparatus (paragraph bridging pages 9 and 10);

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means for automatically determining a closest entry point into the data communications network (processor 200-Fig. 3) which includes:

means for automatically sending information (220-Fig. 3) via a toll free link to the data communication network (page 11, lines 3-6);

means for automatically recognizing the location of the communication apparatus, comparing the location to a stored list of entry points, selecting the closest entry point and transmitting the contact information for the selected entry point to the apparatus (230,240,250-Fig. 3; the paragraph bridging pages 11 and 12);

means for automatically using the provided contact information to establish communication, through the entry point, with a remote node (5-Fig. 1; the first full paragraph of page 12); and

means for transmitting the image(s) and the identifying information to the remote node (page 12, first full paragraph).

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GROUNDS OF REJECTION TO BE REVIEWED

I. Rejection of claims 1 - 5, 7 - 15, 19 and 20 under 35 U.S.C. § 103(a)

Whether the subject matter of claims 1 - 5, 7 - 15, 19 and 20 is unpatentable under 35 USC § 103(a) over International Patent Application Publication No. WO 00/01138 ("Steinberg et al.") in view of U.S. Patent No. 6,795,852 B1 ("Kleinrock et al.").

II. Rejection of claim 6 under 35 U.S.C. § 103(a)

Whether the subject matter of claim 6 is unpatentable under 35 USC § 103(a) over Steinberg et al. and Kleinrock et al. and further in view of U.S. Patent No. 5,995,239 ("Kagawa et al.").

ARGUMENTS

I. Argument with Respect to the Rejection of Claims 1 - 5, 7 - 15, 19 and 20 Under 35 U.S.C. § 103(a)

Appellants' invention provides an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point. The method of appellants recited in claim 1 requires the recited steps including the step of automatically determining a closest entry point into the data communications network including the steps of

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(a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

The automatic determination of the closest entry point in the present invention involves automatically sending information over a toll free link to the server to ascertain the location of the communication apparatus, at the network, automatically recognizing the location, comparing the location to list of network entry points, selecting the closet entry point and sending the contact information back to the communication apparatus which automatically uses the contact information to establish communication with the data network via the closest entry point.

Independent apparatus claim 15 includes means for carrying out such functions.

In support of the rejection, the Office Action asserts that Steinberg et al. discloses all of the

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claimed steps or elements except it "... does not specifically teach automatically determining a closest entry point into the data communications network." Thus, it is acknowledged that Steinberg et al. does not teach or suggest a critical element of the claimed method and apparatus of appellants.

The Office Action relies on Kleinrock et al. to provide the teaching which is missing in the primary reference. At page 3 of the Office Action it is stated that

Nevertheless it is well known in the art at the time of the invention to automatically determine the closest entry point into a data communication network, as evidenced by Kleinrock. In an analogous art, Kleinrock disclosed an automatic network connection system which....:

Reference is made to the disclosure at column 4, lines 23 - 32.

The Office Action concludes that

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the automatic connection system disclosed by Kleinrock, within Steinberg's system so users can be automatically connected to the most appropriate phone number and thereby avoid enormous long distance telephone charges (Kleinrock Col 1, lines 25 - 33).

Appellants submit that this conclusion is based on an improper combination of the prior art references.

In order to properly support a rejection under Section 103 the reference(s) must place the claimed subject matter in the possession of the general public. The reference(s) must provide some teaching or

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suggestion which would enable those skilled in the art, in conjunction with their knowledge of the state of the art, to know of the claimed invention. Here the references do not provide such a teaching or suggestion.

Kleinrock et al. teaches a method wherein a user calls one telephone number from a computer communication connection and the call goes into a computer having a database of the access numbers of many service providers. The receiving computer identifies where the user is calling from via an identifying feature and then determines the most appropriate, for example, the cheapest or most proximal number the user should use to connect to the Internet including the cost of the phone call and of the service provided by the service providers.

The method of Kleinrock et al. is remote from that of appellants and also from that of Steinberg et al. In essence, this reference provides a method for connecting a user to a computer information network via a computer network. Kleinrock et al. does not anywhere suggest anything with respect to an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point.

Since the methods of the references are remote from each other, there is no suggestion to be found in either reference to combine their teachings in the manner described in the Office Action to support the

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rejection. It is acknowledged that Steinberg et al. does not suggest a critical feature of appellants' claimed invention. Kleinrock et al. does not suggest automatic determination of the closest entry point within the context of appellants' claimed method and system.

For all the foregoing reasons, the combination of Steinberg et al. and Kleinrock et al. does not support the rejection of claims 1 - 5, 7 - 15, 19, and 20 under 35 U.S.C. §103(a). The USPTO has failed to sustain the burden of showing that the claimed subject matter is unpatentable.

II. Argument with Respect to the Rejection of Claim 6 Under 35 U.S.C. § 103(a)

Claim 6 has been rejected as being unpatentable under 35 USC § 103(a) over Steinberg et al. and kleinrock et al. and further in view of Kagawa et al.

Claim 6 is dependent upon claim 1 and recites the embodiment wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network includes recited steps (A) - (G).

Claim 6 is patentably distinguishable over these references for the same reasons discussed above with respect to Steinberg et al. and Kleinrock et al. and further because Kagawa et al. does not teach or suggest critical features of appellants' claimed subject matter including the step of automatically determining a

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closest entry point into the data communications network.

In support of this ground of rejection the Office Action states (see the first paragraph on page 5) that

...Steinberg does not specifically recite the plurality of transmission rates of data images between the system and the remote node. However, Kagawa teaches that when data is transmitted successfully the system increases the transmission rate to increase the mean transmission rate.

The Office Action (see page 5) concludes that it "...would have been obvious to one of ordinary skill in the art to be motivated to introduce an alternative or obvious modification of Kagawa teachings to enhance the communication rate and reliability of data transmission as disclosed in col. 12, lines 14 - 16."

Appellants' submit that this conclusion is not justified based on the disclosures of the references. Steinberg et al. and Kleinrock et al. have been discussed in detail above. Kagawa et al. discloses a facsimile apparatus for sending and receiving image data. The disclosure of Kagawa et al. is remote from appellants' claimed subject matter and does not provide any suggestion, individually or in combination with the other references, that would teach appellants' claimed subject matter according to the requirements of Section 103.

In addition, there is no justification for taking from Kagawa et al. only a specific teaching out of the context of the overall disclosure of the

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reference and combining that specific teaching with the other references. Doing so represents impermissible reconstruction of the prior art.

Therefore the combination of Steinberg et al., Kleinrock et al. and Kagawa et al. does not teach the subject matter of claim 6 within the meaning of Section 103.

CONCLUSION

For all of the foregoing reasons the 35 USC § 103 rejections should be reversed and claims 1 - 15, 19 and 20 allowed.

Respectfully submitted,



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CLAIMS APPENDIX

Claims On Appeal

Claim 1. A method of transmitting to a remote node in a data communications network, digital images from an image data source, comprising the steps of:

providing the customer a specific communication apparatus, said communication apparatus having identifying information stored in a memory thereof; and

accessing and transferring one image or a plurality of images from the image data source to said communication apparatus;

automatically determining a closest entry point into the data communications network including the steps of;

(a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

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transmitting said image or plurality of images and said identifying information, through the closest entry point, to a remote node of the data communications network; and

receiving, at the remote node of the data communication network, said image or plurality of images and said identifying information.

Claim 2. The method of claim 1 wherein the identifying information is preset in the memory in the apparatus.

Claim 3. The method of claim 1 wherein in automatically determining said entry point GPS information is used.

Claim 4. The method of claim 2 wherein in automatically determining said entry point caller ID information is used.

Claim 5. The method of claim 1 wherein the communication network is the Internet, the closest entry point is an Internet Service Provider (ISP) and the remote node is a server.

Claim 6. The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network comprises the steps of:

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- (A) constructing from each image at least one of a plurality of packets of information wherein the image is comprised of the totality of packets;
- (B) transmitting a packet at a given data rate;
- (C) determining whether the transmission was successful; and
- (D) performing the following steps, if the transmission is successful:
 - increasing the data rate,
 - determining if the data rate exceeds a select maximum data rate;
 - setting the data rate to the maximum data rate, if the data rate exceeds the select maximum data rate;
- (E) decreasing the data rate, if the transmission was not successful, until successful transmission is achieved;
- (F) transmitting a next packet; and
- (G) repeating steps (B) through (F) until the totality of packets is transmitted.

Claim 7. The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network further comprises the steps of:

detecting an interrupting signal; and
interrupting the transmission upon positive detection of the interrupting signal; and

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re-attempting transmission after a waiting period following an interruption.

Claim 8. The method of claim 7 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network further comprises the steps of:

receiving synchronizing information from the remote node, at the initiation of a transmission event;

synchronizing the transmission event with the information received at the remote node.

Claim 9. The method of claim 1 further comprising the steps of:

rendering the least one of said images in hardcopy form at a remote node of the data communications network.

Claim 10. The method of claim 1 further comprising the steps of:

rendering the least one of said images in digital form at the remote node of the data communications network.

Claim 11. The method of claim 1 further comprising the step of:

storing said image or plurality of images at a remote node of the data communications network.

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Claim 12. The method of claim 1 further comprising the steps of:

sharing said image or plurality of images, in at least one of a plurality of image product forms, with at least one of a plurality of recipients.

Claim 13. The method of claim 1 wherein the identifying information is received at the apparatus and stored in the memory in the apparatus.

Claim 14. The method of claim 1 further comprising the step of:

entering image data items into a data structure in a memory at a remote node of the data communications network.

Claim 15. A communications apparatus enabling the transmission to a remote node in a data communications network, of digital images from an image data source and of identifying information, said communications apparatus comprising:

means for accessing one image or a plurality of images from the image data source;

means for storing identifying information in a storage component of said apparatus;

means for automatically determining a closest entry point into the data communications network comprising;

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(a) means for automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, means for automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, means for automatically using the provided contact information to establish communication with the data network via the closest entry point; and

means for transmitting the image or plurality of images and the identifying information, through the entry point, to a remote node of the network.

Claim 19. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network comprise a GPS receiver.

Claim 20. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network utilize caller ID information.

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EVIDENCE APPENDIX

Appellants have not submitted in the application any evidence pursuant to §§ 1.130, 1.131 and 1.132 of 37 Code of Federal regulations.

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RELATED PROCEEDINGS APPENDIX

There are no decisions by a court or the Board of Patent Appeals and Interferences in any related proceedings.

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